Supreme Court, U.S.
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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

JON B. JACOB

PETITIONER

v

UNITED STATES

RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES
COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

With the termination in part of the National Emergency Act, of March 9, 1933, by P.L. 94-412, Sept. 14, 1976, and the enactment of the Foreign Sovereign Immunities Act P.L. 94-583, 90 Stat. 2891, approved October 21, 1976, can 28 U.S.C. 1330(a), 1605(a) 1, 2, 3, 4, 5 of said act be applied by a citizen of New Mexico, as sovereign under the Constitution of United States and the Law of Nations, against the United States and its local laws under the Erie doctrine and Rules of Decision Act?

List Of The Parties

Jon Jacob,
Petitioner

United States
Respondent

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CONSTITUTION OF UNITED STATES

Article I Section 8 clause 10, To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

Article III Section 2 clause 1 The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party; to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

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BRIEF FOR PETITIONER

PETITIONER, Jon B. Jacob, respectfully prays that a Writ of Certiorari issue to review the Judgment Memorandum of the Court of Appeals for the Tenth Circuit, to overturn the lower court's dismissal based upon the Anti Injunction Act of 26 U.S.C. 7421(a) in favor of Appellee and against plaintiff.

OPINIONS BELOW

Court of Appeals Order and Judgment, filed November 2, 1994, appears in Appendix at A-1

U.S. District Court's Memorandum, filed, May 23, 1994, appears in Appendix A-7, infra.

The "Order" of the District Court filed May 13, 1994, appears at Appendix A-9, infra.

JURISDICTION

The District Court in this matter denied Petitioner's complaint. This Court's jurisdiction is invoked under Title 28 U.S.C. 1254(1)

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Article I Section 8 cl. 10, Article III Section 2 cl. 1, Amendment V, IX, X to the Constitution of United States.

28 U.S.C. 1330(a), 28 U.S.C. 1605(a) (1) (2) (3) (4) (5)-(B).

STATEMENT OF THE CASE

Petitioner sued for an injunction against the United States in February, 1994, based upon the Foreign Sovereign Immunities Act (FSIA) of 1976 in the United States District Court for the District Court of New Mexico for confiscation of petitioners property for an alleged due and owing income tax. The United States moved to have the case dismissed for lack of jurisdiction based upon 26 U.S.C. 7421(a) App. A-1, at which time the Court dismissed the case as not being warranted in existing law pursuant to Fed R. Civ P. 11 in addition to imposing sanctions in the amount of $5,000.00. It must be noted that previously, petitioner had filed a suit under 28 U.S.C. 1331 but after becoming more learned in the law, realized his mistake, hence filed suit under 28 U.S.C. 1330(a). The district court denied

the issue presented as being meritless (App. A8-A9). Appeal was taken to the Tenth Circuit Court of Appeals at which time the Court invoked the Anti Injunction Act of 26 U.S.C. 7421(a) (App. A1). In addition to the sanctions imposed upon Jacob in the sum of $5000.00 by the district court, the appeals court added an additional $500.00. There were no hearings and no transcripts.

The lower courts converted petitioner's action under 28 U.S.C. 1330(a) and 1605(a) into an action under 28 U.S.C. 1331 thereby denying petitioner due process and creating a political decision. Moreover, since the issue is jurisdictional, it cannot be waived or avoided by the respondent. Fed. R. Civ. P. 12 (h)(3). In a case brought under §1330 against a foreign state, unlike a diversity case for example, resolution of the jurisdictional question depends on federal substantive law—the Act defining one of the essential elements of the claim—the absence of sovereign immunity.

REASONS FOR GRANTING THE WRIT

A. THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN TOTAL DISREGARD OF A GOVERNING ACT OF CONGRESS, IN CONFLICT WITH AN APPLICABLE DECISION OF THIS COURT, AND IN CONFLICT WITH OTHER FEDERAL COURTS OF APPEALS IN THE SAME MATTER

Starting in 1973 and continuing until 1976, the year the National Emergency Act of 1933 was terminated in part and the Foreign Sovereign Immunities Act enacted, Congress studied and debated the problems with the National Emergency of Act of 1933 still in effect. Senate Report 93—549 reveals some insights about what the Congress was concerned with. In the *Introduction* to the Senate Report 93—549 it states:

A majority of the people of the United States have lived all of their lives under emergency rule. For 40 years, freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws brought into force by states of national emergency.

During the discussions of the Senate Special Committee Senator Church said, "That declaration of national emergency has continued in effect from 1933 to the present day. A series of Presidents have used these powers; the process appears endless—the states of emergency, unless this Special Committee lives up to its Senate mandate, will never end."

Then latter Mr. Justice Ramsey Clark, speaking of Americans standing to sue while under the National Emergency Act said, "Most difficult from a standpoint of standing to sue. The Court, you might say, has enlarged the standing rule in favor of the litigant. But I don't think it has reached the point, presently, that would permit many such cases to be litigated to the merits."

Senator Church responding, "What you are saying, then, is that if Congress doesn't act to standardize, restrict, or eliminate the emergency powers, that no one else is very likely to get standing in court to contest!"

Senator Mathias commenting on the problems with the emergency powers said, "...Attorneys General, Presidents, Members of Congress, other public officials had a very hazy concept about this body of emergency law that lies here like a time bomb ready for a wrong-minded man, or woman, to get hold of and use."

It, therefore, appears that the Foreign Sovereign Immunities Act of 1976, in conjunction with Public Law 94—412 (90 Stat. 1255) 94th Congress, terminating in part, the National

Emergency Act of 1933, resulted from Congresses recognition that Americans had their unequivocal guarantee to the commercial federal common law under the separation of powers doctrine upheld by the 9th and 10th Amendments clouded and obscured by said Emergency Act and its local laws. That is, individual American's sovereign identity with its standing in court under the commercial federal common law, and its guaranteed protection under the 9th and 10th Amendments had become inaccessible due to the National Emergency Act of 1933. Said Act and the resulting constructive trust in wholesale fashion, swallowed up Americans' individual sovereign identity in exchange for a number to become sovereign in a class of "persons" under local territorial law as reflected in the *Erie Railroad v Tompkins* 304 U.S. 64 and the Rules of Decision Act. as follows:

> The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil cases where they apply.

Thus, Americans had lost their separation of powers and choice of the commercial federal common law, as opposed to local law, because they had lost their right to choose, by the National Emergency Act of 1933 to be an individual sovereign, distinct from the quasi sovereign governments under local law. In the early 1970's, the American people started to become disillusioned with the effects of its local laws and this is reflected in *Verlinden v Central Bank of Nigeria*, (1983) 461 US 480, at 490 as it relates to 28 U.S.C. § 1330(a) whereby the Court stated, "The act contains no indication of any limitation based on the citizenship of the Petitioner" and further; at 490 the Court in referring to House of Representatives Judiciary Committee Report No. 94—1487, 94th Cong., 2d Sess (1976)

stated: "[T]he Report refers to the growing number of controversies between 'American citizens' and foreign states id., at 6-7 and expresses the desire to insure "*our citizens* ... access to the courts. id., at 6 (emphasis added)." Continuing, "the testimony of Bruno A. Ristau on HR 11315, at 31. Congress ... not by restricting the class of potential Plaintiffs, but rather by enacting substantive provisions requiring some form of substantial contact with the United States. (See 28 USC § 1605.) If an action satisfies the substantive standards of the Act, it may be brought in federal court regardless of the citizenship of the Plaintiff." And further; at the hearings on the bill, it was pointed out that American citizens are increasingly coming into contact with foreign states and entities owned by foreign states. These interactions arise in a variety of circumstances, and they call into question whether our citizens will have access to the courts in order to resolve ordinary legal disputes." Thus, the commercial federal common law that was suspended during the National Emergency Act and is now accessed under the FSIA. Petitioner fulfills the standards as laid down by Congress because, respondent, by the local commercial "nature" of their actions against petitioner, admit to a substantial contact, the contact being confiscation of petitioners property.

Thus, petitioner's case is about whether the lower Courts must uphold Petitioner's sovereign right of contract under international jurisprudence with its boundaries outside the Erie doctrine supra, and Rules of Decision Act supra and its local laws, supported by the 9th and 10th Amendments and the separation of powers doctrine.

28 U.S.C. 1605(a) (3) states:

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality is engaged in a commercial activity in the United States;

Respondent has confiscated petitioner's property in violation of international law in that petitioner has no contract, unilateral or otherwise with respondent and its local laws as petitioner's contract resides within the Constitution under the Law of Nations under the 9th and 10th Amendments which reads:

Amendment 9,

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparge others retained by the people.

Amendment 10,

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

In *First Nat. City Bank v Banco Para El Comerico Exteriro de Cuba* (1983) 462 US 611, 77 L. Ed 2d 46, 103 S Ct 2591, The Court held that the Foreign Sovereign Immunities Act did not require the application of the law of the forum state including the forum state's conflicts principles; but the case was governed by principles common to both international law and federal common law, which under the circumstances, was necessarily formed by international law principles and by articulated congressional policies, including those policies articulated in the FSIA.

28 U.S.C. §1603 Definitions which states in part:
For purposes of this chapter—

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) is an organ of a foreign state or political subdivision thereof, or a majority of whose share or other ownership interest is owned by a foreign state or political subdivision thereof, and

> (c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.
>
> (d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

A foreign state pursuant to 28 U.S.C. 1603 (a) is substantiated by Moore's Federal Practice under History and Comment at JC 799 as:

> "foreign state" includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in 1603 (b). The term "political subdivisions" set forth in subdivision (a) includes all governmental units beneath the central government, including local governments.

Petitioner's underlying premise in his action is that the commercial federal common law attaches to the individual sovereign citizen in a state in the United States and is accessed under the Foreign Sovereign Immunities Act and the Constitution under the Law of Nations. Whereas, the quasi sovereignty of United States and its political subdivisions, is a class of "persons" (subjects) enjoined together in a state under

local laws of the Erie doctrine supra, and Rules of Decision Act, supra. As such, the two sovereign states become foreign to each other. Thus, petitioner's state under the commercial federal common law is foreign to respondent's state under its local laws. "Political subdivision of Nigeria was 'foreign state' within meaning of commercial activity exception under Foreign Sovereign Immunities Act." *Hester Intern. Corp. v Federal Republic of Nigeria*, N.D. Miss 1988, 681 F.Supp. 371.

Petitioner has standing in, the commercial federal common law as sovereign in "the territory" of United States, outside the trust territory of United States, among the law of nations because he refuses to be a beneficiary of United States' policy considerations, thus there is no trust res within the United States' local territorial laws with its public debt. As regards territorial jurisdiction, the Court stated: Sovereign immunity is granted to foreign governments as matter of comity and it is a privilege granted by one sovereign to another in the family of nations, but it is not a right enjoyed by one sovereign *within territorial jurisdiction of another* and fact that the doctrine has been codified in this chapter does not alter that fundamental premise. *New England Merchants Nat. Bank v Iran Power Generation and Transmission Co.*, D.C.N.Y.1980, 502 F.Supp. 120 Mandamus denied 646 F.2d 779, on remand 518 F.Supp. 69. [Emphasis added]

As regards the term trust territory, the Court stated: The Trust Territory of the Pacific Islands was not a "foreign State" under this chapter where the territory was subject to United States jurisdiction under its trusteeship agreement. *Sablan Const. Co. v Government of Trust Territory of Pac. Islands*, D.C.N. Marina Islands 1981, 526 F.Supp. 135. Likewise, American citizens can volunteer to the trustee agreement by submitting to have gifted property in the form of an intangible

trust res within the United States, dispite the fact that the National Emergency Act has for the most part been terminated. Thus, it appears that Congress recognized this fact that one can not volunteer when Congress enacted 28 U.S.C. 1605(a) (4) which reads:

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—
> (4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

"There is general agreement that a foreign state may not claim immunity when the suit against it relates to rights in property, real or personal, obtained by gift. The reason is that, in claiming rights obtained by gift, the foreign state claims the same right which is enjoyed by private persons." House of Representatives Judiciary Committee Report No. 94—1487, 94th Cong., 2d Sess. (1976)

In other words, "persons" under control of local laws via the Erie doctrine supra, and Rules of Decision Act supra, are a class of "persons" in "a trust territory" of the quasi sovereign United States as being beneficiaries to its local policy considerations, therefore, not in a "foreign state". In contrast, there are those identifiable individual sovereign citizens such as petitioner whose commercial activities are under the commercial federal common law outside the relm of local territorial law. As Justice Holmes stated in his dissenting opinion in *Southern Pacific Co v Jensen* 244 U.S. 205, 222 (1917), "The common law is not a brooding omnipresence in the sky, but the articulate voice of some sovereign or quasi sovereign that can be identified."

28 U.S.C. 1605(a) (2) reads:

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

> (2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon a act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

According to House of Representatives Judiciary Committee Report No. 94—1487, 94th Cong., 2d Sess. (1976). If an activity is one that normally could be engaged in by a private party, it is a "commercial activity" and a foreign sovereign is not absolutely immune from liability therefor; however, if an activity is one in which only a sovereign can engage, it is a non commercial activity for purposes of the Foreign Sovereign Immunities Act. Under this doctrine, the immunity of a foreign state is "restricted" to claims involving a foreign state's public acts and does not extend to suits based on its commercial or private conduct.

Commercial activities exception to sovereign immunity of foreign sovereigns under Foreign Sovereign Immunities Act (FSIA) applies only if sovereign's commercial activity has sufficient connection "jurisdictional nexus" with United States; not only must there be jurisdictional nexus between United States and commercial acts of foreign sovereign, there must be connection between plaintiff's cause of action and commercial acts of foreign sovereign; thus, in order to satisfy commercial activities exception, commercial activity that provides jurisdictional nexus must also be activity on which lawsuit is based. 28 U.S.C. §§ 1602 et seq., 1605(a)(2).— *Stena Rederi AB v Comision de Contratos del Comite Ejecutivo General del Sindicato Revolucionario de Trabajadores Petroleros dela Republica Mexicana*, S.C., C.A.5 (Tex) 1991, 923 F.2d 389.

The Court of Appeals in its decision is upholding respondent's local commercial activities in the confiscation of petitioners property, thereby creating a jurisdictional nexus based upon a constructive trust that petitioner is beneficiary of said trust and its public debt. Thus, petitioner is under its local laws and that petitioner has no will of his own. Said decision is clearly a denial of due process.

28 U.S.C. 1605(a) states:

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—
>
> (1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver.

A foreign state may explicity waive sovereign immunity by treaty (such as treaties of friendship, commerce or navigation) or by contract with a private party. Since a political subdivision, agency or insturmentialy by the foreign state. See House Report No. 94—1487, Sept. 9, 1976).

Respondent has entered into commerce with an individual and as such is liable to petitioners action.

B. THE COURT OF APPEALS BY INVOKING THE ANTI INJUNCTION ACT, 26 U.S.C. 7421(a) CREATED A CONFLICT WITH THE DUE PROCESS CLAUSE AND APPLICABLE DECISIONS OF THIS COURT

It is established international law that action by a state in prescribing or enforcing a rule that it does not have jurisdiction

to prescribe or to enforce is a violation of international law, giving rise to the international responsibility of the state. Restatement (Second), § 8. Consistently with this international law principle, it is settled constitutional doctrine in this country that "due process requires ... that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, *he* has certain minimum contacts with [the forum]." *International Shoe Company v Washington*, 326 U.S. 310, 316 (1945) (emphasis added).[1] And *Hanson v Denckla*, 357 U.S. 235 (1958), made it even more explicit that it is the defendant's, not the plaintiff's contacts with the forum which are pivotal to a Due Process analysis:

> *The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State* ... [I]t is essential that in each that there be some act by which the *defendant* purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

357 U.S. at 253 (emphasis added). See also *Burger King Corp. v Rudzewicz*, 471 U.S. 462, 471-72 (1985); *World-Wide Volkswagen Corp. v Woodson*, 444 U.S. 286, 298 (1980). In *Asahi Metal Industries Co. v Superior Court*, __ U.S. __, 107 S.Ct. 1026, 1033 (1987), the Court reemphasized that, for Due Process purposes, the affiliating connection between the forum state and the nonresident defendant "must come about *by an action of the defendant purposefully directed towards the forum state*" (emphasis added).

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[1]In enacting the FSIA, Congress expressly incorporated the Due Process principles inunicated in International Shoe, H.R. Rep. No. 94—1487 [1975] U.S. Code Cong. & Admin. News at 6612.

The record here is barren of any affiliating contacts by the petitioner with the United States in relation to claims made upon petitioners property.

And further; regarding 28 U.S.C. 1605(a)(2), the House Committee Report (No. 94—1487) cites "a representation in the United States by an agent of a foreign state that leads to an action for restitution based on unjust enrichment..

Clearly, 28 U.S.C. 1605(a)(2) has strong application to petitioner's cause of action as he has not received due process and yet his property has and is being confiscated for a commercial activity disguised in the "nature" of a sovereign tax issue while only being its "purpose". The tax is local in "nature" operating quasi in rem thru an intangible trust res.

A clarification of the meaning of "commercial" in 28 U.S.C. §1603(d) for the purposes of determining immunity was given by the Court in *Republic of Argentina v. Weltover, Inc.* 112 S.Ct. 2160 (1992). Here the court said,

> [B]ecause the Act provides that the commercial character of an act is to be determined by reference to the 'nature' rather than its 'purpose,' the question is not whether the foreign government is acting with a profit motive or instead with the aim of fulfilling uniquely sovereign objectives. Rather, the issue is whether the particular actions that the foreign state performs (whatever the motive behind them) are the *type* of actions by which a **private party** engages in "trade and traffic or commerce." [emphasis added]

In other words, should one elect to partake of the policy considerations of local law, to be regulated in commerce under the Erie Doctrine supra, and Rules of Decision Act supra, that is a private choice. At the opposite end of the spectrum however, should one elect to partake of international law not to be regulated in commerce under the Erie doctrine supra, and Rules of Decision Act supra, then that is also a private choice.

The comprehensive Congressional scheme of the FSIA makes it the sole jurisdictional source for suits against foreign sovereigns.[2] In addition, the FSIA sets forth detailed procedural rules for suits against foreign states, including special rules governing venue (§ 1391(f), jury trials (§ 1330(a), answers to complaints (§ 1608), counterclaims (§ 1607), and default judgments (§ 1608(e). Moreover, its legislative history makes it abundantly clear that the statute was expressly "intended to preempt any other state or Federal law (excluding applicable international agreements) for according immunity to foreign sovereigns ..." H.R. Rep. No. 94—1487, 94th Cong., 2d Sess., 12, reprinted in [1976] U.S. Cong. & Admin. News 6604, 6610 (1975). Additionally, the Appeals Court invoking the Anti Injunction Act is in error and violative of 28 U.S.C. 1605(a)(B) which states:

> (a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—
>
> (B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

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[2] Since the enactment of the FSIA, six different panels of the court of appeals have uniformly held that in actions against foreign states the Act preempts all other jurisdictional statutes.
Proyecjin de Venezuela v Banco Industrial, 760 F.2d 390, 392 (2d Cir. 1985); Canadian Overseas v Compania de Acero, 727 F.2d 274, 277 (2d Cir. 1984); O'Connell Machinery Co. v M.V. "Americana", 743 F.2d 115, 116 (2d Cir. 1984) cert denied, 496 U.S. 1086 (1984); Texas Trading & Milling Corp. v Federal Republic of Nigeria, 647 F.2d 300, 307-09 (2d Cir. 1981), cert. denied, 454 U.S. 1148 (2d Cir. 1982); Ruggiero v Compania Peruana de Vapores, 639 F.2d 872, 873, 879 (2d Cir. 1981); Carney National Oil Corp. 592 F.2d 673, 676 (2d Cir. 1979)

The *Verlinden v Central Bank of Nigeria,* supra, 461 US 480, (1983) Court reaffirmed the rule of the *Osborn v President, Directors & Co. of Bank,* 22 U.S. (9 Wheat) 738, 6 L.Ed. 204 (1824), that it is a sufficient foundation for jurisdiction within the meaning of the "arising under" clause of Article III §2 clause 1 when the title or right set up by the party may be defeated by one construction of the Constitution or law of the United States and sustained by the opposite construction. Petitioner's construction of the Constitution, Foreign Sovereign Immunities Act and Law of Nations as to his rights to the commercial federal common law is contrary to respondents construction that petitioner is limited to the local laws of the United States.

The *Verlinden* Court further pointed out in footnote #20 that, "Under the Act, however, subject-matter jurisdiction turns on the existence of an exception to foreign sovereign immunity, 28 U.S.C. § 1330(a). And further; the Court pointed out concerning 1330, that Congress did not exceed the scope of Art. III of the Constitution by granting the federal courts subject matter jurisdiction over certain civil actions by foreign plaintiffs against foreign sovereigns where the rule of decision might be provided by state law. The *Verlinden* Court, in reversing the Court of Appeals said, "the Court of Appeals relied heavily upon decisions construing 28 U.S.C. § 1331, the statute which grants district courts general federal-question jurisdiction over any case that "arises under" the laws of the United States. ... As these decisions make clear, Art III "arising under" jurisdiction is broader than federal-question jurisdiction under § 1331, and the Court of Appeals' heavy reliance on decisions construing that statute was misplaced." Likewise, the Court of Appeals decision in this instant case is misplaced.

A conflict exists that is denying petitioner direct access to the Constitution of United States and the Law of Nations via

Foreign Sovereign Immunities Act by the lower courts in their application of the Erie doctrine supra, and Rules of Decision Act supra.

The district court and appellate court decisions are in conflict with the decisions of this Court and need for guidance is acute. This is a timely and rare opportunity to provide that guidance. There are no rules of decision concerning the Foreign Sovereign Immunities Act to date that model American citizens applying its mandate against the United States with its local laws as being foreign to a petitioner. A decision will settle the growing number of citizens who want to be responsible for their own security and welfare outside the dictatorial powers of governmental authority. Moreover, the decision below is erroneous, and the issue presented is important as commerce under the commercial federal common law will grow to new heights.

CONCLUSION

Petition for Writ of Certiorari should be granted.

Dated: February 11, 1995

Respectfully submitted,

Jon B. Jacob

Jon B. Jacob Pro Se
Petitioner

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Jon Barton Jacob
Plaintiff-Appellant

No. 94-2127
D. New Mexico
(D.C. No. CIV-94-125-JB

v

United States of America
Defendant-Appellee

ORDER AND JUDGMENT *

Before MOORE, ANDERSON, and KELLY, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Jon B. Jacob appeals the district court's orders dismissing his action for injunctive relief, imposing a $5,000 sanction against him, and enjoining him from filing any further complaints until he pays outstanding sanctions. Jacob contends that the court erred in dismissing his suit as barred by the Anti Injunction Act, 26 U.S.C. §7421(a), and that it abused its

discretion in imposing sanctions under Fed. R. Civ. P. 11. We affirm.

Mr. Jacob has filed two previous suits that disputed the federal government's authority to assess taxes.[1]

Both the tax court and the district court found the respective actions to be based on frivolous tax protester arguments and both imposed sanctions.

In this third action, Jacob seeks an injunction to protect his property for federal tax liens. Essentially, Mr. Jacob claims that the United States is a foreign territorial state with no power over his sovereign property. He argues that the district court should not have dismissed his suit for lack of subject matter jurisdiction because his action does not concern a "tax issue." Rather, Jacob characterizes his action as a property and boundary dispute arising under U.S. Const. art. III, § 2; art. IV, § 3; and amend.X, and he also claims that jurisdiction is conferred by 28 U.S.C. §§ 1330(a) and 1605(a), which apply to actions involving foreign states. Appellant's Br. at 1, 12-13.

Additionally, he asserts that jurisdiction is proper under 28 U.S.C. § 1251(b) (2), which applies to actions between the United States and a state. Appellant's Supp. Br. at 5.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the court's General Order filed November 29, 1993. 151 F.R.D. 470.

1 See Jacob v Commissioner No. 19460-90 (T.C. July 1, 1992) and Jacob v Illanes, No. 93-916 JB, 1993 WL 625575 (D. N.M. Dec. 10, 1993) at R. Vol. I, Tab 4, Exs. A, B, and C.

We review de novo the dismissal of a case for lack of subject matter jurisdiction. Fostvedt v United States, 978 F.2d 1201, 1202 (10 Cir. 1992), cert denied, 113 S. Ct. 1589 (1993).

The Anti Injunction Act provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person . . . ." 26 U.S.C. §7421(a). Although there are limited exceptions to the Act, none applies in Mr. Jacob's case.[2]

Jacob seeks to overcome the statutory bar by calling his action a property clause dispute. However the relief he seeks is an injunction prohibiting the government from enforcing its federal tax liens, and the purpose of his suit is to restrain the assessment or collection of federal taxes. Therefore, the Anti Injunction Act applies, and the district court properly dismissed Mr. Jacob's action for lack of subject matter jurisdiction. Bob Jones Univ. v Simon, 416 U.S. 725, 738-39 (1974); Enocks v Williams Packing & Navigation Co., 370 U.S. 1, 5 (1962); Lonsdale v United States, 919 F.2d 1440, 1442-43 (19 Cir 1990); see also Overton v United States, 925 F.2d 1282, 1284-85 (10 Cir. 1991).

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2 See 26 U.S.C. §§ 6212(a) & (c); 6213 (a); 6672 (b); 6694 (c): 7426 (a) & (b) (1); and 7429 (b) (providing for actions related to redeterminations, stays, levies, and refunds in specified circumstances). Additionally, a judicial exception applies "if the taxpayer demonstrates that: 1) under no circumstances could the government establish its claim to the asserted tax; and 2) irreparable injury would otherwise occur.' " Lonsdale v United States, 919 F.2d 1440, 1442 (10 Cir. 1990) (quoting Souther v Mihlbachler, 701 F.2d 131, 132 (10 Cir. 1983) (citations omitted).

Mr. Jacob also contests that district court's imposition of sanctions. We review a Rule 11 award of sanctions for abuse of discretion. Cooter & Gell v Hartmax Corp., 496 U.S. 384, 405 (1990); Coffey v Healthtrust, Inc., 955 F.2d 1388, 1393 (10 Cir. 1992).

Rule 11 empowers the district courts to award sanctions against a party who files a pleading, motion or other paper that is not "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Fed. R. Civ. P. 11(b) (2). Moreover, courts have inherent powers to dismiss or reject suits for nonpayment of costs or sanctions awarded in a prior action. Hymes v United States, 993 F.2d 701, 702 (9th Cir. 1993); see also Christensen v Ward, 916 F.2d 1485 (10 Cir.) cert. denied, 498 U.S. 999 (1990).

As indicated, Mr. Jacob filed a previous suit in district court. At that time, the court clearly advised him that his arguments were frivolous, and it imposed sanctions which Jacob has not paid. R. Vol. I, Tab 4, Exs. A and B, Tab 17, Tab 21. Apparently undeterred, he now brings this new action and again argues from the same specifically noted and disapproved tax protester litany: He is his own sovereign; he is not subject to the laws of the United States; the United States is a foreign state without power to assess penalties and interest or to impose liens against his property. We have consistently rejected such arguments as lacking in legal merit and patently frivolous. See e. g.., Lonsdale, 919 F.2d at 1448. The district court did not abuse its discretion either in awarding monetary sanctions or in enjoining Jacob from filing any further complaints until he pays all outstanding sanctions that the district court has imposed.

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Finally, the government seeks sanctions against Jacob for bringing a frivolous appeal.[3]

In its brief, the government has requested an award in the sum of $2,500.00 in lieu of costs and attorneys' fees. We have already noted Mr. Jacob's frivolous arguments. His appeal raises no real assignment of error, but merely reasserts the same clearly inapplicable jurisdictional grounds he argued below. Thus, Jacob decries the district court's refusal to hear this case, and he rehashes the patently frivolous tax protester rhetoric. We have previously imposed sanctions for such appeals, which we have found to be frivolous. See e.g., United States v Gosness, 961 F.2d 1518, 1521 (10 Cir. 1992); Lonsdale, 919 F.2d at 1448; Christensen, 916 F.2d at 1485.

However, this is the first time Mr. Jacob has appealed. Moreover, he appeals not only the district court's substantive decision, but also its imposition of sanctions. Therefore, we decline to impose sanctions in the amount requested by the government. Instead, we think a sanction for just damages in the amount of $500.00 is appropriate for Mr. Jacob's frivolous appeal of his "tax protester" claims.

Mr. Jacob has not had an opportunity to respond to the sanction we propose. Additionally, the proposed amendment to Fed. R. P. 38 provides for specific notice and a reasonable opportunity to respond in all events.[4]

Therefore, we hereby order Jacob to show cause why the above sanction should not imposed. Mr. Jacob's response will be limited to five pages and must be received by the clerk of this court within fifteen (15) days from the filing of this Order and Judgment. Failure to respond shall result in automatic imposition of the proposed sanction.

For the reasons stated, the judgment of the district court is AFFIRMED, and Mr. Jacobs is ORDERED TO SHOW cause why the proposed sanction should not be imposed.

ENTERED FOR THE COURT

Dated this 2d day of November, 1994

Stephen H. Anderson
Circuit Judge

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3 28 U.S.C. § 1912 and Fed. R. App. P. 38 authorize the imposition of sanctions in such cases.

4 Effective Dec. 1, 1994, Fed R. App. P. 38 shall be amended to provide:

> If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

Amends, to the Fed. R. App. P., Communication from the Chief Justice, the Supreme Court or the United States, H.R. Doc. No. 247, 103d Cong., 2d Sess.. 69-70 (1994).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT FOR NEW MEXICO

JON B. JACOB
Plaintiff

No. 94-125 JB

vs

UNITED STATES
Defendant

ORDER

THIS MATTER came on for hearing on May 23, 1994, on the Court's May 18, 1994, order to show cause as to why sanctions should not be imposed against Plaintiff. The Court having reviewed the pleadings and the relevant law, having heard the arguments of Plaintiff, and being otherwise fully advised in the premises, finds Plaintiff violated Fed R. Civ. P. 11(b)(2).

The Court finds that Plaintiff is not "warranted by existing law or by a non frivolous argument for the extension, modification, or reversal of existing or the establishment of new law . . ." Id. Accordingly, the Court orders Plaintiff to pay five thousand dollars ($5000.00) to the Registry of the Court.

In addition, Plaintiff is hereby enjoined from filing any complaints in the District of New Mexico until Plaintiff pays all fines owed to the Court, consisting of the previous $5000.00 fine imposed by order of the Court dated December 21, 1993, in addition to today's $5000.00 fine. "It is well established that a court can enjoin from filing frivolous and vexatious lawsuits."

Richcreek v Grecu, 612 F. Supp. 111, 116 (S.D. Ind. 1985), citing Pavilonis v King, 626 F.2d 1075, 1078 n.7 (1st Cir. 1980), cert. denied, 449 U.S. 829 (1980); Lacks V Fahmi, 623 F.2d 254, 257 (2d Cir 1980). Plaintiff's history of filing meritless suits against the United States, the Internal Revenue Service and its employees justifies issuance of an injunction.

Wherefore,

IT IS FURTHER ORDERED that Plaintiff be, and hereby is, fined in the amount of five thousand dollars ($5000.00) payable to the Registry of the Court.

IT IS FURTHER ORDERED that plaintiff be, and hereby is, enjoined from filing any complaints in the United States District Court, District of New Mexico, until Plaintiff pays to the Court all fined currently owed.

IT IS FURTHER ORDERED that if Plaintiff submits to the Court any document prohibited by this injunction, the Court will undertake an examination as to whether a violation of this injunction occurred and for such further proceedings as deemed necessary, including dismissal sua sponte and issuance of an order directing Plaintiff so show cause as to why he should not be held in contempt of Court.

DATED this 18, day of May, 1994.

s/ Juan G. Burciaga
Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT FOF NEW MEXICO

JON B. JACOB
Plaintiff

No. 94-125 JB

vs

UNITED STATES
Defendant

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Defendant's April 1, 1994 motion to dismiss, or in the alternative, for summary judgment, and Plaintiff's April 13, 1994 motion for preliminary injunction. The Court, having reviewed the pleadings, the submissions of the parties and the relevant law, and being otherwise fully advised in the premises, finds Plaintiff's motion for preliminary injunction is not well taken and is denied. The Court finds Defendant's motion to dismiss is well taken and is granted. Pursuant to Fed. R. Civ. P. 11(c)(1)(B), the Court further orders Plaintiff to show cause as to why sanctions against Plaintiff should not be imposed.

By order dated December 21, 1993, this Court dismissed a similar pro se action filed by Plaintiff, Jacob v Illanes, Civ. No. 93-916 JB. In that action, Plaintiff advanced the frivolous contention that I.R.S. agents lack authority to issue summonses. Pursuant to Fed R. Civ. P. 11(b)(2), the Court sanctioned Plaintiff in the amount of $5,000, payable to the Registry of the

Court. On February 2, 1994, Plaintiff, undeterred by the Court's previous sanction, filed present complaint. Plaintiff once again seeks to restrain the assessment and collection of approximately $148,000 in federal taxes, penalties and interest owed, this time by arguing, essentially, that the United States government is without power to impose liens because it is a "foreign state" to which Plaintiff owes no debt. See Plaintiff's Motion in Opposition to Defendant's Motion to dismiss at 4. Plaintiff's other arguments are indecipherable.

Plaintiff's complaint does not appear to be "warranted by existing law or by a non frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law . . ." Fed. R. Civ. P. 11(b)(2). Rule 11 requires a pleading to be objectively reasonable. A mere good faith belief in the merit of an argument is insufficient. Huges v Fort Collins, 926 F.2d 986, 989 (10 Cir. 1991); Adamson v Bowen, 855 F.2d 668, 673 (10 Cir. 1988). Rule 11 imposes the same duty on an unrepresented party as on an attorney, although the fact that the litigant is pro se may be considered is determining an appropriate sanction. See 5A Charles A. Wright and Authur R. Miller, Federal Practice and Procedure § 1338 (1990) (citing cases). The Court therefore orders Plaintiff to show cause as to why he has not violated Fed. R. Civ. P. 11(b)(2).

Wherefore,

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff's motion for preliminary injunction be, and hereby is, denied. The evidentiary hearing on the motion for preliminary injunction, set for Monday, May 23, 1994, at 9:30 a.m., is hereby vacated.

IT IS FURTHER ORDERED that defendant's motion to dismiss, or in the alternative, for summary judgment, be, and hereby is, granted.

IT IS FURTHER ORDERED that plaintiff JON BARTON JACOB be, and hereby is, directed to appear before this Court on Monday, May 23, 1994, at 9:30 a.m., to show cause, if any he has, as to why further sanctions should not be imposed.

IT IS FURTHER ORDERED that the marshal is hereby directed to personally serve a copy of the foregoing memorandum opinion and order upon plaintiff forthwith.

DATED this 23, day of May, 1994.

s/ Juan G. Burciaga
Chief Judge

Declaration Of Independence

I, Jon Barton Jacob, witnessed by the Almighty Creator by the Declaration of Independence solemnly Publish and Declare my Right to remove, absolute my res in trust to the foreign jurisdiction known as the unincorporated association United States, and return to the Republic of the United States under the Constitution of United States. Any and all past and present political ties implied by operation of law or otherwise in trust is hereby dissolved.

So done this 8th day of January, 1994.

s/ Jon Barton Jacob c/o 13224 Candelaria Road NE, #F-2 Albuquerque, NM Journal: January 15, 16, 22, 23, 29, 30, 1994.

State of New Mexico

County of Bernalillo

Bill Tafoya being duly sworn declares and says that he is Classified Advertising manager of The Albuquerque Journal, and that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws 1937, and that payment therefore has been maid or assessed as court costs; that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 6 times, the first publication being on the 15 day of Jan., 1994, and the subsequent consecutive publications on Jan. 16, 22, 23, 29, 30, 1994.

s/ Bill Tafoya

Sworn and subscribed to before me, a notary Public in and for the County of Bernalillo and State of New Mexico, this 31 day of Jan. 1994.

PRICE $68.10

CLA-22-(R-1/93 ACCOUNT NUMBER C84959